

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Marc DONATH

Patent No.: 7,572,770 B2

Confirmation No.: 5584

Filed: September 1, 2005

Art Unit: 1647

For: USE OF AN INTERLEUKIN 1 RECEPTOR
ANTAGONIST AND/OR
PYRROLIDINEDITHIOCARBAMATE FOR
THE TREATMENT OR PROPHYLAXIS OF
TYPE 2 DIABETES

Examiner: I. D. Dang

REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37
CFR § 1.705 (d)

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Pursuant to CFR § 1.705 (d), the Patentee hereby requests reconsideration of the patent term adjustment indicated on the Issue Notification for Patent No. 7,572,770 B2 (Exhibit 1). Specifically, while the Issue Notification indicates a patent term adjustment of 219 days, Patentee submits that the patent term adjustment should correctly be 317 days.

STATEMENT OF FACTS

1. The Issue Notification issued in this case on July 22, 2009 indicated that the Patent Term Adjustment was 219 days, (see Exhibit 1).
2. However, in accordance with the recent District Court decision in *Wyeth et al. v. Dudas*, 88 USPQ2d 1538 (D.D.C. 2008), the correct Patent Term Adjustment should be 98 days of prosecution delay, plus 344 days for the failure of the USPTO to issue

a patent within three (3) years of the actual filing date of the application (37 C.F.R. § 1.702(b)), minus 125 days of applicant delays, for a total of 317 days of Patent Term Adjustment.

3. Accordingly, Patentee hereby requests that the U. S. Patent and Trademark Office correct the calculation of the Patent Term Adjustment for the above-identified patent to 317 days.

**COMPLIANCE WITH REQUIREMENTS OF
37 CFR § 1.705 (b)(1) AND (2)**

4. A statement of facts is presented above, detailing the relevant dates and the correct patent term adjustment.
5. The present patent is not subject to any Terminal Disclaimer or any expiration date specified in a Terminal Disclaimer (§ 1.705(b)(2)(iii)).
6. There were no circumstances constituting a failure to engage in reasonable efforts to conclude processing or examination of the above-identified application (§ 1.705(iv)(B)).

CONCLUSION

The USPTO is requested to correctly indicate that Patent No. 7,572,770 B2 is entitled to 317 days of Patent term Adjustment.

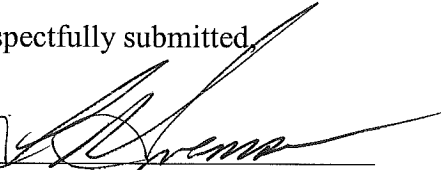
PAYMENT OF FEES

As set forth in the attached Fee Transmittal, the Commissioner is hereby authorized to charge the amount of \$200.00 to Deposit Account No. 02-2448 for the consideration of this Request as required by 37 C.F.R. § 1.18(e).

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required.

Dated: OCT 13 2009

Respectfully submitted,

By 

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Attachment

Exhibit 1 – Issue Notification